KAREN P. HEWITT
United States Attorney
REBECCA S. KANTER
Assistant United States Attorney
California State Bar No. 230257
United States Attorney's Office
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101
Telephone: (619) 557-6747

Attorneys for Plaintiff
UNITED STATES OF AMERICA

FILED
MAY 12 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. FRANCISCO DEL TORO, et. al, Defendant.	Criminal Case No. 08cr0899-BTM **STIPULATION OF FACT AND JOINT MOTION FOR RELEASE OF MATERIAL WITNESS AND ORDER THEREON**

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Rebecca S. Kanter, Assistant United States Attorney, and defendant DIONERY MEDINA-SOTO, by and through and with the advice and consent of defense counsel, Kenneth J. Troiano, Esq., that:

1. Defendant agrees to execute this stipulation at the next court appearance and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to plead guilty to count one of the superceding information charging defendant with Bringing In Aliens Without Presentation, in violation of 8 U.S.C. § 1324(a)(2)(B)(iii) and Title 18, United States Code, Section 2.

2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original plea agreement to the Government.

3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or before **April 25, 2008.**

4. The material witnesses in this case, Manuel Leyva-Romero and Felipe Barba-Garcia:

a. Are aliens with no lawful right to enter or remain in the United States;

b. Entered the United States illegally on or about March 3, 2008;

c. Entered in the trunk of a vehicle driven by Defendant at the San Ysidro, California Port of Entry (POE) and were driven to Defendant's house at 21 East 2nd Street, National City, California;

d. Were having others pay on their behalf $3,500-$3,600 to others to be brought into the United States illegally and/or transported illegally to their destination therein;

e. Defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right to enter or remain in the United States; and,

f. May be released and remanded immediately to the Department of Homeland Security for return to their country of origin.

5. After the material witness is ordered released by the Court pursuant to this stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

a. The stipulated facts set forth in paragraph 4 above shall be admitted as substantive evidence;

b. The United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of an unavailable witness; and,

c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004), "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted and cross-examined the witness who made the "testimonial" hearsay statements, defendant waives the right to confront and cross-examine the material witness in this case.

6. By signing this stipulation and joint motion, defendant certifies that defendant has

read it. Defendant certifies further that defendant has discussed the terms of this stipulation and joint motion with defense counsel and fully understands its meaning and effect.

Based on the foregoing, the parties jointly move the stipulation into evidence and for the immediate release and remand of the above-named material witness to the Department of Homeland Security for return to their country of origin.

It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

Dated: 5/1/08. [signature]
REBECCA S. KANTER
Assistant United States Attorney

Dated: 4-22-08. [signature]
KENNETH J. TROIANO
Defense Counsel for MEDINA-SOTO

Dated: 4-22-08. DIONERY MEDINA SOTO
DIONERY MEDINA-SOTO
Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 5-12-08.

United States ~~Magistrate~~ District Judge